



# **THE ATTORNEY GENERAL OF TEXAS**

**GERALD C. MANN**  
~~XXXXXXXXXXXXXXX~~  
**ATTORNEY GENERAL**

**AUSTIN 11, TEXAS**

**Honorable E. W. Wright  
Member, State Board of Health  
Boyle, Texas**

**Opinion No. 9-4409  
Re: Member of Texas Defense Guard  
holding civil office.**

**Dear Sir:**

Your letter of recent date submits to this department a request for an opinion upon the following question:

**Will your acceptance of and qualification for an office in the Texas Defense Guard jeopardize your position as a Member of the State Board of Health?**

Evidently you have in mind the provisions of our Constitution, Article XVI, Sections 33 and 40, and wish to know whether your acceptance of an office in the Texas Defense Guard will vacate your office on the State Board of Health, and prevent you from receiving the compensation attached thereto.

**The Constitution, Article XVI, Section 33 provides:**

**"The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy and Marine Corps. (Sec. 33, Art. 16, adopted election Nov. 8, 1932)**

**Constitution, Article XVI, Section 40, provides:**

"No person shall hold or exercise, at the same time, more than one Civil Office of emolument, except that of Justice of Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States; or retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, from holding in conjunction with such office any other office or position of honor, trust or profit, under this State or the United States, or from voting at any Election; General, Special or Primary, in this State when otherwise qualified. (Sec. 40, Art. 16, adopted election Nov. 8, 1932.)\*"

The question presents itself whether the proviso attached to each of the foregoing articles applies to officers and enlisted men of the "Texas Defense Guard".

Clearly, officers and enlisted men of the National Guard of Texas may hold a civil office under this State and receive the compensation attaching thereto while they are members of that military organization, and even after they are inducted as such into the active military service of the United States. *Carpenter v. Sheppard*, 135 Tex. 413, 145 S.W. (2d) 562. However, the "Texas Defense Guard" had no existence at the time these provisos were made a part of our Constitution, and, therefore, the "Texas Defense Guard" is not mentioned therein as is the "National Guard of Texas".

Does the phrase "National Guard of Texas", as used in the provisos, embrace and include the organization named the "Texas Defense Guard"? We are of the opinion that it does.

The problem of construction is essentially an exercise in semantics. Words and phrases used in legislation are to be interpreted liberally in order effectually to achieve the purpose of the legislation. While that purpose must be gathered from the language used, the will of the legislators is not to be thwarted by imputing a literal and a narrow meaning to the language they have selected to express

Honorable E. W. Wright, page 3 (0-4409)

their thought. Rather, we must seek the essential meaning or idea intended to be conveyed, rather than the superficial and restricted meaning which the words used may likewise convey. Thus, the word "carriage", in our exemption statutes, includes an automobile. *Parker v. Sweet*, 127 S. W. 851.

It is true that the "Texas Defense Guard" is not named in the provisos. The "National Guard of Texas" is. But the "Texas Defense Guard" differs from the "National Guard of Texas" only in the following respects: (1) in name; (2) in the fact that it is to be organized and maintained only during the period while the National Guard of Texas, or a part of it, is in active federal service; and (3) in that it is not subject, as such, to federal service, though its individual member may be taken as any other citizen into federal service. Vernon's Revised Civil Statutes, Article 5891a; 32 U.S.C.A., Sec. 194.

We are of the opinion that the phrase "National Guard of Texas" was used in the provisos to indicate the organized militia of the State, rather than that organization of the militia, as then constituted, known as the "National Guard of Texas". To hold otherwise would be to observe the form and ignore the substance.

Since both the "National Guard of Texas" and the "Texas Defense Guard" are components of the organized militia of this State, it follows that your membership in the Texas Defense Guard will not prejudice your position with the State Board of Health.

Yours very truly

APPROVED APR 14, 1942  
Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By /s/  
R. W. Fairchild  
Assistant

RMF:AMM:EM  
APPROVED OPINION COMMITTEE  
BY RMF CHAIRMAN

RMF:MM